

Federal Court



Cour fédérale

Date: 20240822

Docket: IMM-13043-22

Citation: 2024 FC 1311

Ottawa, Ontario, August 22, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

PARDEEP KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Pardeep Kaur seeks judicial review of the refusal by an immigration officer [Officer] of her application for restoration of her previous status and her application for a work permit under the Post Graduate Work Permit [PGWP] program.

[2] For the reasons that follow, the Officer's decision was reasonable and procedurally fair. The application for judicial review is dismissed.

II. Background

[3] Ms. Kaur is a citizen of India. She arrived in Canada in January 2017 on a student visa to complete a two-year program in Financial Planning and Wealth Management at Lambton College. Her study permit expired on December 31, 2018.

[4] Ms. Kaur completed her program and obtained her final transcripts on December 14, 2018. She received a letter confirming the completion of her studies on December 21, 2018.

[5] On December 27, 2018, Ms. Kaur applied in person for a PGWP at the port of entry in Niagara Falls. The application was refused.

[6] On December 31, 2018, Ms. Kaur submitted a second application for a PGWP using the Immigration, Refugees and Citizenship Canada [IRCC] online portal. She received a request for clarification on June 4, 2019, and responded by submitting further documentation.

[7] Ms. Kaur's second application for a PGWP was refused on July 22, 2019, because she had not demonstrated she was engaged in full time studies. Ms. Kaur did not seek leave and judicial review of that decision.

[8] On September 16, 2019, Ms. Kaur submitted a third application, in which she sought to restore her status and obtain a PGWP. The Officer refused the application on December 13, 2022. This is the decision under review.

III. Issues

[9] The issues raised by this application for judicial review are whether the Officer's decision was reasonable and whether it was procedurally fair.

IV. Analysis

[10] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[11] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific*

Railway Company v Canada (Attorney General), 2018 FCA 69 at para 54). The ultimate question is whether an applicant had a full and fair chance to be heard (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

[13] The Officer's notes in the Global Case Management System [GCMS] form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5). The Officer's GCMS notes read as follows:

The applicant entered Canada January 4, 2017 as a student. The applicant is seeking a Post-Graduate Work Permit (PGWP). In order to be eligible, an applicant must have completed a program at a[n] eligible designated learning institution (DLI) that is at least 8 months in duration leading to a degree, diploma or certificate. They must also provide a completion of study letter and their final transcripts. Lastly, they must apply within 180 days of the issuance of the completion letter or transcripts, whichever comes first. The applicant attended Lambton College for a 2-year Financial Planning & Wealth Management program. Lambton College is PGWP eligible. The applicant is seeking to restore their status. Please note a foreign nation[al] can only apply to restore their status and authorization to one they held immediately prior to the loss of status. As per R182(1), an applicant has 90 days after losing temporary resident status to apply to restore the status they previously held. Therefore, the applicant is not eligible for restoration as the applicant is not applying to restore the status she last held. Further, the applicant provided educational transcripts that were issued December 14, 2018 and a completion of studies letter that was issued December 21, 2018. The applicant applied for their PGWP on September 16, 2019. The applicant has not applied within 180 days of the issuance of their educational transcripts as they were issued first. Application refused.

[14] It is clear from the GCMS notes that the Officer refused Ms. Kaur's application on two separate grounds: she was not seeking to restore the status she held previously; and her

application for a PGWP was submitted more than 180 days after the issuance of her final transcripts.

[15] Ms. Kaur argues that her restoration application was submitted within the applicable time limit, because her study permit did not in fact expire on December 31, 2018. She relies on s 183(5)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], which states in relevant part: “[...] if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until (a) the day on which a decision is made, if the application is refused [...]”. Ms. Kaur therefore maintains that her study permit remained valid until July 22, 2019, and she sought to restore her status within the 90 day period prescribed by s 182 of the IRPR.

[16] Ms. Kaur filed her restoration application using IRCC form IMM-5710, and checked a box indicating that she was applying to “restore [her] status as a worker”. However, Ms. Kaur never held status as a worker in Canada. The Officer reasonably found that she was applying for restoration of a work permit, not the study permit she held previously. Whether or not she complied with the 90 day application deadline is therefore irrelevant.

[17] Ms. Kaur does not dispute that her application for a PGWP was submitted after the expiration of the 180 day period prescribed by the PGWP guidelines. However, she complains that there was a delay of more than six months before IRCC refused her second application, which made it impossible for her to reapply within 180 days.

[18] The Respondent notes that Ms. Kaur did not seek leave and judicial review of the 2019 decision to refuse her second application, and that decision is not properly before the Court (citing Rule 302 of the *Federal Courts Rules*, SOR/98-106, *Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842, *Wilson v The Queen*, 1983 CanLII 35 (SCC), and *Huang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 28). This application concerns only the Officer's decision to refuse her third application on December 13, 2022.

[19] Ms. Kaur's failure to meet the eligibility criteria for a PGWP is determinative. She applied for a PGWP after the 180 day period had elapsed, and the Officer had no discretion to waive this requirement (*Lawrence v Canada (Citizenship and Immigration)*, 2021 FC 607 at para 35, *Saggu v Canada (Citizenship and Immigration)*, 2020 FC 31 at para 11).

[20] The delay in processing the second application did not amount to a breach of procedural fairness. Paragraph 3(1)(f) of the IRPA states that one of its objectives is "to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces". However, this does not amount to a statutory timeline for deciding PGWP applications.

[21] Nor did the Officer deny Ms. Kaur's an opportunity to be heard. The Officer's decision was based Ms. Kaur's failure to meet the legislative requirements (*Dunkley v Canada (Citizenship and Immigration)*, 2022 FC 892 at paras 30–31).

[22] The Officer's decision to refuse Ms. Kaur's application for restoration of a work permit (which she had never held previously) and her application for a work permit under the PGWP program was reasonable and procedurally fair.

V. Conclusion

[23] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

VI. Conduct of this Proceeding

[24] This application for judicial review was heard by videoconference on April 16, 2024 before a judge who retired from the Court on June 1, 2024. By Order of the Chief Justice dated June 25, 2024, the application was reassigned to a different judge. By letter dated June 25, 2024, the parties agreed that the application would be determined based on the written record and audio recording of the hearing.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13043-22

STYLE OF CAUSE: PARDEEP KAUR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 16, 2024

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: AUGUST 22, 2024

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